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CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1930

No. 183

STATE BOARD OF TAX COMMISSIONERS OF THE STATE OF INDIANA, JAMES SHOWALTER, PLINY H. WOLFARD and PHILIP ZOERCHER, AS MEMBERS OF STATE BOARD OF TAX COMMISSIONERS OF THE STATE OF INDIANA, JAMES M. OGDEN, ATTORNEY GENERAL OF THE STATE OF INDIANA,

Appellants,

v.

LAFAYETTE A. JACKSON,

Appellee.

APPELLANTS' STATEMENT AS TO JURISDICTION ON APPEAL

JAMES M. OGDEN,
Attorney General of Indiana.
JOSEPH W. HUTCHINSON,
Deputy Attorney General of Indiana,
GEORGE W. HUFSMITH,
Deputy Attorney General of Indiana,
V. ED. FUNK,
Deputy Attorney General of Indiana,
Counsel for Appellants.

FT. WAYNE PTG. CO. FT. WAYNE, IND.

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OF THE STATE OF INDIANA,
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Appellee.

STATEMENT AS TO JURISDICTION ON APPEAL

May It Please the Court:

The appellants in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully present:

A

STATUTORY PROVISION SUSTAINING JURISDICTION

The Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 936,938, provides that Sections 238 and 266 of the Judicial Code are amended to read as follows:

"Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections and not otherwise."

"Sec. 266. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: Provided, however, that one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: Provided, that if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time

before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

B

DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL

The decree sought to be reviewed was entered on the 14th day of February, 1930. (Record pp. 85-87*).

The application for appeal was presented on the 7th day of May, 1930. (Record pp. 91-96*).

NATURE OF CASE AND RULING BELOW

This is an appeal from a final decree of the United States District Court, Southern District of Indiana, three judges sitting in the cause wherein the appellee filed a Bill of Complaint against the appellants to enjoin the enforcement of an Act of the 76th Session of the General Assembly of Indiana, Acts 1929, Chapter 207, passed on the 11th day of March, 1929, and approved and signed by the Governor on the 16th day of March, 1929; Section 13 of said Act provides that the Act, except Section 11, shall be in effect from and after the first day of July, 1929. Said Act of 1929, Chapter 207, requires licenses for the operation, maintenance, opening or establishment of stores in the State of Indiana, prescribing the license and filing fees to be paid therefor, and disposition thereof, and the powers and duties of the State Board of Tax Commissioners in connection therewith, and prescribing penalties for the violation thereof.

It is alleged further in said Bill of Complaint that the plaintiff (appellee) is a citizen and resident of Marion County, Indiana, and the owner and operator of 225 stores in the City of Indianapolis, each situated at different locations and from which he sells groceries, fresh vegetables and meats at wholesale and at retail. That the amount in controversy is alleged to exceed the sum of three thousand dollars, exclusive of interest and cost.

The basis for the relief prayed for is the claim that the above referred to Act of the General Assembly of the State of Indiana is unconstitutional and void, because:

First. "Said act violates the provisions of the Fourteenth Amendment of the Constitution of the

United States in that it deprives the plaintiff of his property without due process of law and denies to the plaintiff (appellee) the equal protection of the laws."

Second. "Said act violates the provisions of the Fourteenth Amendment of the Constitution of the United States in that it is an unwarranted abridgement of the rights and privileges guaranteed to the plaintiff (appellee) by said Fourteenth Amendment."

Third. "That said act is invalid because it violates Section 23 of Article 1 of the Bill of Rights of the Constitution of Indiana."

Fourth. "That said act violates Section 1 of Article 10 of the Constitution of Indiana." (Bill of Complaint, Record pp. 2-22*).

After all issues were formed the cause was submitted for trial before the Honorable Will H. Sparks, Circuit Judge, Honorable Robert C. Baltzell and Thomas W. Slick, District Judges. The court after hearing all evidence submitted in said cause decreed the above referred to Act was in violation of the Fourteenth Amendment of the Constitution of the United States and the Constitution of Indiana, and enjoined the defendants (appellants) from the enforcement of said act. (Record pp. 85-87*).

Opinion as read by said court appears in the record on pp. 71 to 84*.

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*NOTE: All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the United States District Court, Southern District of Indiana, and on file with the Clerk of this Court. The record has not yet been printed.

D

CASES BELIEVED TO SUSTAIN JURISDICTION

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Moore v. Fidelity & Deposit Co., 272 U. S. 317, 320-321;
Smith v. Wilson, 273 U. S. 388;
Ex Parte Buder, 271 U. S. 461, 465.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Sections 238 and 266 of the Judicial Code as amended by the Act of February 13, 1925.

Respectfully submitted,

JAMES M. OGDEN,
Attorney General of Indiana.
JOSEPH W. HUTCHINSON,
Deputy Attorney General of Indiana,
GEORGE W. HUFSMITH,
Deputy Attorney General of Indiana,
V. ED. FUNK,
Deputy Attorney General of Indiana,
Counsel for Appellants.